

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 19, 2004 Division: Public Works

Bulk Item: Yes X No Department: Eng./Construction Management

AGENDA ITEM WORDING: Approval to award bid and execute contract with Fonticiella Construction Corporation for the Medical Examiner's Facility.

ITEM BACKGROUND: In March, 2004, a request for Medical Examiner's Facility was advertised. On April 15, 2004, two (2) bids were received in Purchasing. The bid tabulations are as follows: 1) Fonticiella Construction Corp. base bid \$2,963,000.00, Alt. #1, \$14,300.00, Alt. #2, \$20,000.00, Alt. #3, \$19,000.00, Alt. #4, \$70,350.00, Alt. #5, \$22,500.00, Alt. #6, \$20,000.00. 2) D.L. Porter Constructors Inc. base bid \$3,611,116.00, Alt. #1, \$18,578.00, Alt. #2, \$48,177.00, Alt. #3, \$20,058.00, Alt. #4, \$42,265.00, Alt. #5, \$12,205.00, Alt. #6, \$16,274.00. Recommendation was given by staff to award the bid to Fonticiella Construction Corporation, the lowest responsive bid, for \$2,963,000.00.

PREVIOUS RELEVANT BOCC ACTION: This project is included in the County's Capital improvements plan.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$2,963,000.00

BUDGETED: Yes X NO

COST TO COUNTY: \$2,963,000.00

SOURCE OF FUNDS: Bond Proceeds Fund
307-26501-560620-CH0301-560620

REVENUE PRODUCING: YES NO X AMOUNT PER MONTH YEAR

APPROVED BY: County Atty. [Signature] OMB/Purchasing Risk Management

Item Prepared By: [Signature] [Signature]
Stephanie Coffey, Construction Manager David S. Koppel, P.E., County Engineer

DIVISION DIRECTOR APPROVAL: [Signature] [Signature]
Dent Pierce, Division Director

DOCUMENTATION: Included X To follow Not required

DISPOSITION:

AGENDA ITEM #

D24

MAY 03 2004

TIME:
RECEIVED BY:



HARVARD
JOLLY
CLEES
TOPPE
ARCHITECTS, P.A.
A I A

April 26, 2004

Ms. Stephanie Coffey
Director of Construction and Planning
Monroe County
1100 Simonton St.
Key West, Fl. 33040

**Re: Monroe County Medical Examiner's Facility
HJCT Project No.: 01160.06**

BOARD OF DIRECTORS
R. John Clees, AIA
Jeffrey E. Cobble, AIA
Michael K. Hart, AIA
William B. Harvard, Jr., AIA
Steven M. Helsor, AIA
James A. Shawhan, AIA
Jonathan R. Toppe, AIA
Blanchard E. Jolly, Emeritus

Dear Ms. Coffey,

On April 15, 2004, bids were received for the Medical Examiner's Facility, BID-CMD-98-268-0-2004/PUR. Two bids were received. The apparent low bidder was Fonticella Construction Group with a base bid of \$2,963,000.00. This low bid is approximately \$640,000.00 above our last estimate. As we explained to the Board of County Commissioners (BOCC), we feel this is due in large part to the escalating cost of building materials and fuel prices. We explained that there is no indication that these pricing pressures will lessen in the near future. Accordingly, we recommend the following:

Accept the low bid with no alternates. If approved by your counsel, we will negotiate by change order items that do not affect the scope of the project. We define scope as items that will affect the footprint and/or volume of the building. Items that do not affect scope would include mostly material changes such as roofing, finishes, etc. We would expect a cost reduction between \$100,000.00 and \$200,000.00.

The second option to reduce scope and rebid the project, although possible, brings several concerns and therefore is not recommended.

As we discussed with the BOCC, our concern is that if pricing increases continue at their current rate, we may not receive dollar for dollar savings if we rebid the project after redesign. It needs to be mentioned, that phasing of the project is not feasible and should not be considered. In addition, we have already reduced the footprint of the building to the minimum size and components required to provide a functional work flow for this type of building.

We stand ready to proceed with either decision from the commission.

Sincerely,

Yvette V. London
Yvette V. London, A.I.A.

Vice President
Harvard Jolly Clees Toppe Architects, P.A.

3201
W. Commercial Blvd.
Suite 225
Ft. Lauderdale, FL
33309

954-486-7910
www.hjct.com
AA C000119

Bradenton
Ft. Lauderdale
Ft. Myers
Orlando
St. Petersburg
Tampa

**ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING OFFICE
TABULATION SHEET**

OPEN DATE: APRIL 15, 2004 AT 11:00 AM
TITLE : MEDICAL EXAMINER'S FACILITY
BID-CMD-98-268-0-2004/PUR

RESPONDENT	BID BOND	TOTAL BASE BID	ALT. #1	ALT. #2	ALT. #3	ALT. #4	ALT. #5	ALT. #6
FONTICIELLA CONSTRUCTION CORP.	5%	\$2,963,000.00	\$14,300.00	\$20,000.00	\$19,000.00	\$70,350.00	\$22,500.00	\$20,000.00
D.L. PORTER CONSTRUCTORS INC.	5%	\$3,611,116.00	\$18,578.00	\$48,177.00	\$20,058.00	\$42,265.00	\$12,205.00	\$16,274.00

Bid Committee Present: Lisa Ernst Cherry and Carlos Victores - Purchasing. Jerry Barnett - Construction Management.

Members of the Public Present: Dennis Mower - DL Porter, Dave Kirchuff - BAT, Lazare Perez - Fonticiella.

I hereby certify that this is a true and correct copy of said bid opening and that all bidders listed above have been checked against the State of Florida Convicted & Suspended Vendor listings. All bids listed above were received by the date and time specified.

Bid Opened By: Lisa Ernst Cherry, Purchasing Supervisor

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Fonticiella Construction Contract # _____
Effective Date: May 19th, 2004
Expiration Date: _____

Contract Purpose/Description:
Medical Examiner's Facility

Contract Manager: Stephanie Coffey 4428 Construction Management
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on 5/19/2004 Agenda Deadline: 5/04/04

CONTRACT COSTS

Total Dollar Value of Contract: \$ \$2,963,000. Current Year Portion: \$

Budgeted? Yes ☒ No ☐ Account Codes: 307-26501-560620-CH0301-560620


Grant: \$

County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$____/yr For: _____
(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	5/13/04	Yes <input type="checkbox"/> No <input type="checkbox"/>		5/15/04
Risk Management	5/11/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Bill Graham	5/11/04
O.M.B./Purchasing	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Shirley Abaker	5-13-04
County Attorney	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>	Rob Wolfe (see 9800500-9)	5/11/04

Comments: _____

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a STIPULATED SUM

AGREEMENT

made as of the 19th day of May in the year of TWO THOUSAND FOUR
(In Words, indicate day, month and year.)

BETWEEN the Owner:
(Name and address)

Monroe County Board of County Commissioners
500 Whitehead Street
Key West, Florida 33040

and the Contractor:
(Name and address)

Fonticiella Construction Corp.
11400 W Flagler Street Ste 206
Miami, FL 33174

For the following Project:
(Include detailed description of project, location, address and scope)

Medical Examiner's Facility
Crawl Key

SCOPE: Construction of a new facility to house the Medical Examiner. The Work is a one story, CMU structure, elevated to elevation of 9.00 NGVD, and pile cap supported. The building is approximately 9,500 square feet, and includes related site work, a wood truss roof structure and a 2 inch standing seam metal roof.

The Construction Manager is:
(Name and address)

Stephanie Coffey
Monroe County Construction Management
1100 Simonton Street
Second Floor – Room 2-216
Key West, Florida 33040

The Architect is:

Harvard Jolly Clees Toppe Architects, P.A.
3201 W. Commercial Blvd. Suite 225
Ft. Lauderdale, FL 33309

The Owner and Contractor agree as set forth below.

ARTICLE 1

The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement: these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2

The Work of this Contract

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Scope of Work as specified in the Project Manual for this project, Section 00300.

ARTICLE 3

Date of Commencement and Substantial Completion

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than
(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

409 calendar days from date of Commencement.

subject to adjustments of the Contract Time as provided by the Contract Document
(Insert provisions if any for liquidated damages relating to failure to complete on time)

ARTICLE 4

Contract Sum

4.1 The owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of two million nine hundred sixty-three thousand Dollars/100 (\$2,963,000.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: **NONE**
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement. Attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

4.3 Unit prices, if any, are as follows:

NONE

ARTICLE 5

Progress Payments

5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for payment shall be one calendar month ending on the last day of the month, or as follows:

5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the First day of a month, the Owner shall make payment to the Contractor not later than the Twenty-first day of the Same month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Twenty days after the Construction Manager receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included in applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager. When both additions and credits covering related Work or substitutions are involved in a change the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10%):

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety percent (90%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitations)

ARTICLE 6

Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect: such final payment shall be made by the Owner not more than 20 days after the issuance of the final Project Certificate for Payment, or as follows:

ARTICLE 7

Miscellaneous Provisions

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Temporary facilities and services:

(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)

7.4 Monroe County's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Board of County Commissioners.

7.5 A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

7.6 The following items are part of this contract:

a) Contractor shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to Contractor pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Contractor shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Contractor.

b) Governing Law, Venue, Interpretation, Costs, and Fees: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Contractor agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The County and Contractor agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

c) Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Contractor agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

d) Attorney's Fees and Costs. The County and Contractor agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

e) Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Contractor and their respective legal representatives, successors, and assigns.

f) Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

g) Claims for Federal or State Aid. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

h) Adjudication of Disputes or Disagreements. County and Contractor agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

i) Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Contractor agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Contractor specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

j) **Nondiscrimination.** County and Contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

k) **Covenant of No Interest.** County and Contractor covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

l) **Code of Ethics.** County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

m) **No Solicitation/Payment.** The County and Contractor warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Contractor agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

n) **Public Access.** The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Contractor.

o) **Non-Waiver of Immunity.** Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the Contractor in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

p) **Privileges and Immunities.** All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

q) **Legal Obligations and Responsibilities: Non-Delegation of Constitutional or Statutory Duties.** This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the

constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

r) **Non-Reliance by Non-Parties.** No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Contractor agree that neither the County nor the Contractor or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

s) **Attestations.** Contractor agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

t) **No Personal Liability.** No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

u) **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

v) **Section Headings.** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

Special Conditions, if any are detailed in Section 01000 of the Project Manual for this Project

ARTICLE 8

Termination or Suspension

8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

Article 9

Enumeration of Contract Documents

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

9.1.1 The Agreement is this executed Standard Form of Agreement between Owner and Contractor.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction.

9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated February 2004, and are as follows:

Document	Title	Pages
----------	-------	-------

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
5/3/2004	AGREEMENT BETWEEN OWNER AND CONTRACTOR	00500-7

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.5 The Drawings are as follows, and are dated on each individual drawing unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
--------	-------	------

As listed in Table of Contents, Section 00001 of the Project Manual for this project.

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
1	3/29/2004	19
2	4/5/2004	4Last printed

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least four original copies of which one is to be delivered to the Contractor, one each to the Construction Manager and Architect for use in the administration of the Contract, and the remainder to the Owner

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**By: _____
Deputy ClerkBy: _____
Mayor/Chairman

Date: _____

(SEAL)

Attest:

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

END OF SECTION 00500

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT M. WOLFE

CHIEF ASSISTANT COUNTY ATTORNEY

Date 5-11-04

5/3/2004

AGREEMENT BETWEEN OWNER AND CONTRACTOR

00500-9

GAT

Section 00750

General Conditions of the Contract for Construction

Where the Construction Manager is Not a Constructor

Table of Articles

- | | |
|--|---|
| 1. General Provisions | 8. Time |
| 2. Owner | 9. Payments and Completion |
| 3. Contractor | 10. Protection of Persons and Property |
| 4. Administration of the Contract | 11. Insurance and Bonds |
| 5. Subcontractors | 12. Uncovering and Correction of Work |
| 6. Construction by Owner or By Other Contractors | 13. Miscellaneous Provisions |
| 7. Changes in the Work | 14. Termination or Suspension of the Contract |

ARTICLE I

GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 The Contract Documents: The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 The Contract: The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) Between the Construction Manager and Contractor, (3) between the Architect and construction Manager, (4) between the Owner and a Subcontractor of subcontractor or (5) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

1.1.3 The Work: The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager.

1.1.5 The Drawings: The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 The Specifications: The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 The Project Manual: The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 Execution, Correlation and Intent

1.2.2 Execution of the Contract by the Contractor is a presentation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Document is to include all items necessary for the proper execution and completion of the Work by the contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.6 Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to all other like portions of the Work.

1.3 Ownership and Use of Architect's Drawings, Specifications and Other Documents

1.3.1 The Drawing, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set.- Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to the Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.3.2 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

1.4 Capitalization

1.4.1 Terms capitalization in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs,

Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 Interpretation

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 Definition

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 Information and Services Required of the Owner

2.2.2 The owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The Owner shall forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect.

2.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Other Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 Owner's Right to Stop the Work

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated;

however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.4 Owner's Right to Carry Out the Work

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such three-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such second three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Construction Manager's and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event of clean-up issues, Owner has right to provide a minimum of 24 hours notice. In the event of safety issues determined to be of a serious nature, as determined by the Construction Manager, notice will be given, and contractor is required to rectify deficiency immediately.

ARTICLE 3

CONTRACTOR

3.1 Definition

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout this Agreement as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The plural term "Contractors" refers to persons or entities who perform construction under Conditions of the Contract that are administered by the Construction Manager, and that are identical or substantially similar to these Conditions.

3.2 Review of Contract Documents and Field Conditions by Contractor

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Construction Manager and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Construction Manager or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Construction Manager and Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Construction Manager and Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Manager and Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 Supervision and Construction Procedures

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, subject to overall coordination of the Construction Manager as provided in Subparagraphs 4.6.3 and 4.6.4.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by test, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent work.

3.3.5 The Contractor shall verify that the Construction Documents being worked with are the most recent and updated available, including all Addenda information. Also the Contractor will perform the work strictly in accordance with this contract.

3.4 Labor and Materials

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 The Contractor is responsible for the conduct of his employees at all times. Misconduct, destruction of property, unsafe practices, or violation of any Federal or State regulations including abuse of alcohol or drugs, will be cause for permanent dismissal from the project. If any Contractor employee is determined to be detrimental to the Project, as deemed by the Construction Manager, the Contractor will remove and/or replace the employee at the request of the Construction Manager. Employees dismissed from the project will be transported from the job site at the Contractor's expense.

3.4.4 The Contractor shall be totally responsible for the security of his work, materials, equipment, supplies, tools, machinery, and construction equipment.

3.4.5 The Contractor shall be responsible for complete, timely and accurate field measurements as necessary for proper coordination, fabrication and installation of his materials and equipment. The Contractor agrees to cooperate with the Construction Manager, if required, to accommodate any discovered variations or deviations from the Drawings and Specifications so that the progress of the Work is not adversely affected.

3.5 Warranty

3.5.1 The Contractor warrants to the Owner, Construction Manager and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 Taxes

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 Permits, Fees and Notices

3.7.1 The Contractor shall secure and pay for all permits, impact fees, governmental fees, licenses, inspections and surveys required by Federal, State, or Municipal bodies having jurisdiction over the project for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received. The Owner will not assess any County building permit or County impact fees. The Contractor will be responsible for any other building permit costs or impact fees required for this project. The Contractor shall secure and pay for all building and specialty permits including plumbing, electrical, HVAC, etc.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Construction Manager, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Construction Manager, Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.